

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK



January 12, 2007

CLERK'S NOTICE 07-01

**NOTICE REGARDING AMENDMENT TO GENERAL ORDER 2006-08 AND
ISSUANCE OF GENERAL ORDER 2007-01
Amended Order Concerning All Chapter 13 Cases**

In light of the 5th Circuit's recent decision in *In re Nair*, 2006 WL 2985937 (5th Cir. 2006), which held that undersecured creditors are not entitled to receive payment of attorneys' fees from the estate in a bankruptcy case, the Court is concerned that parties may be submitting agreed orders in connection with lift stay motions in Chapter 13 cases that authorize the payment of attorneys' fees to undersecured creditors from estate assets. In an effort to insure that the payment of attorneys' fees is only being requested and authorized when the requesting creditor has a properly perfected lien on property of the estate that has a value in excess of the debt owing to the creditor, including the requested attorneys' fees, General Order 2006-08 is being amended to clarify the circumstances under which a creditor may seek to recover attorneys' fees from a debtor's bankruptcy estate and when a debtor may agree to such a request. Specifically, paragraph 11 of General Order 2006-08, as amended by General Order 2007-01, now provides as follows:

11. COMPENSATION AND EXPENSE REIMBURSEMENT TO CREDITOR ATTORNEYS IN CHAPTER 13 CASES. The Court deems \$675 as reasonable compensation for fees and actual expenses for a creditor's attorney who is entitled to compensation from a debtor's estate under 11 U.S.C § 506(b) and applicable non-bankruptcy law in any case, without prejudice to a party contesting entitlement to fees, or the reasonableness of the amount or mode of payment of fees and expenses. Allowance of fees and/or expenses in a greater amount shall be by separate order of the Court after a hearing on application or motion and notice. Effective February 1, 2007, the submission of an agreed order containing a provision providing for the recovery of attorneys' fees in a pending bankruptcy case shall constitute an affirmative representation to the judges of this Court by all signatories to the Agreed Order that there is objective evidence supporting a finding that the creditor has a properly perfected lien and is oversecured.

The amended General Order can be accessed at www.txnb.uscourts.gov or by clicking on General Order 2007-01 at the top of this notice.

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FOR THE COURT
Tawana C. Marshall
Clerk of Court